

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SAMMAMISH HOMEOWNERS, a Washington	)	
non-profit corporation; THOMAS E HORNISH	)	
and SUZANNE J. HORNISH, TRUSTEES OF	)	No. 15-cv-00284 MJP
THE THOMAS E. HORNISH and SUZANNE J.	)	
HORNISH JOINT LIVING TRUST; TRACY and	)	DEFENDANT KING COUNTY'S
BARBARA NEIGHBORS; ARUL MENEZES and	)	OPPOSITION TO SECOND
LUCRETIA VANDERWENDE; and HEBERT	)	EXTENSION OF TIME
MOORE and EVELYN MOORE,	)	
	)	NOTE ON MOTION CALENDAR:
Plaintiffs,	)	July 31, 2015
	)	
vs.	)	
	)	
KING COUNTY, a political subdivision of the	)	
State of Washington,	)	
	)	
Defendant.	)	
	)	

This Court's June 5, 2015 Order Re: Motion to Dismiss for Lack of Standing determined that plaintiff's lacked standing to proceed with this action and provided them with the opportunity "to file an amended complaint which addresses the issues raised herein within 14 days. *Sammamish Homeowners v. Cnty. of King*, C15-284 MJP, 2015 WL 3561533, at \*5 (W.D. Wash. June 5, 2015). On June 19, 2015, the Court granted Plaintiffs' motion for a 30 day extension of this deadline and granted plaintiff's "leave to file an amended complaint no later

DEFENDANT KING COUNTY'S  
OPPOSITION TO SECOND EXTENSION  
OF TIME (15-cv-00284 MJP)- 1

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1 than July 20, 2015.” Dkt. 23. Plaintiffs now seek a *second* extension to file an amended  
 2 complaint without providing (1) any reasonable excuse for failing to meet their first extended  
 3 deadline, or (2) a viable legal or factual theory to overcome their standing deficiencies. Thus,  
 4 King County respectfully asks this Court to deny Plaintiffs’ second requested extension and enter  
 5 final judgment dismissing Plaintiffs’ case with prejudice per the June 5, 2015 Order.

6 **A. Plaintiffs Have Failed to Provide Any Reasonable Explanation For Their Delay in**  
 7 **Obtaining the Necessary Title Reports**

8 In the declaration that Plaintiffs submit with their second motion for an extension,  
 9 Plaintiffs’ admit that they did not order chains of title until July 1, 2015. Dkt. 24-1 at 2. No  
 10 excuse is provided for this delay, which is 26 days after this Court confirmed Plaintiffs’ need to  
 11 obtain chains of title in its June 5, 2015 Order.

12 Although it was unreasonable for Plaintiffs to wait 26 days after this Court’s Order before  
 13 seeking chains of title, Plaintiffs’ lack of diligence dates even farther back in time. On February  
 14 25, 2015, Plaintiffs filed their complaint in this action seeking Declaratory Judgment and Quiet  
 15 Title against King County, but did so without any necessary title investigations, including  
 16 obtaining a chain of title report. *See Roeder Co. v. Burlington Northern, Inc.*, 105 Wash.2d 567,  
 17 578, 716 P.2d 855 (1986) (requiring chain of title to support ownership claim based on centerline  
 18 presumption). On March 23, 2015, Plaintiffs had another opportunity to initiate a title  
 19 investigation when King County filed its Motion to Dismiss and put Plaintiffs on notice of the  
 20 need to investigate and determine their chains of title. Dkt. 9. Nothing was done at this point  
 21 either.

22 A District Court has the discretion to deny leave to amend where the plaintiff has  
 23 engaged in “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure

1 to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party  
 2 by virtue of allowance of the amendment, futility of amendment, etc.” *Smith v. Pac. Properties*  
 3 *& Dev. Corp.*, 358 F.3d 1097, 1101 (9th Cir. 2004). Because Plaintiffs’ delay in obtaining title  
 4 work in the face of an explicit court-imposed deadline is undue and unexplained, the Court  
 5 should deny Plaintiffs’ motion for a second extension and dismiss this case with prejudice for the  
 6 reasons stated in the June 5, 2015 Order.

7 **B. The Court Should Deny Plaintiffs’ Second Extension Because They Offer No**  
 8 **Legally Viable Means of Curing Their Defective Standing**

9 **1. It is Futile for the Original Named Plaintiff’s To Obtain Chains of Title**

10 In ruling on King County’s Motion to Dismiss for Lack of Standing, the Court ruled that  
 11 application of the centerline presumption carried two requirements: Proof of chain of title *and* a  
 12 current deeded interest in the railroad corridor. *See Sammamish Homeowners v. Cnty. of King*,  
 13 C15-284 MJP, 2015 WL 3561533, at \*2 (W.D. Wash. June 5, 2015)(“the Washington Supreme  
 14 Court set two restrictions on the presumption, and Plaintiffs have run afoul of both of them.”).  
 15 Although the individually named Plaintiffs failed under the first requirement, this Court held that  
 16 the second restriction was “[m]ore immediately fatal to their claim.” *Id.* Thus, while Plaintiffs  
 17 claim the necessity for an extension to determine chain of title, they fail to address how they  
 18 could possibly overcome the deficiencies in their own legal descriptions.

19 For plaintiff SHO, the requested extension is even more unnecessary. SHO owns no  
 20 property adjacent to the corridor, and as this Court held, failed to meet any of the Article III and  
 21 prudential requirements for standing. A chain of title report has no bearing on two of the three  
 22 standing requirements. As such, the requested extension lacks a purpose for establishing SHO’s  
 23 ability to proceed with this action.

1           **2.       It is Untimely and Futile For Plaintiffs to Present A Legal Expert to Provide**  
 2           **Opinions on the Law**

3           Plaintiffs further state that a second extension is necessary because they have retained an  
 4 expert “who will express the opinion that Plaintiffs own the fee in the right-of-way under  
 5 Washington law” and “also respond to the issues raised by the Court relating to the title  
 6 conclusion that the words ‘reserve’ a right-of-way does not amount to a reservation unto the  
 7 grantor intending to expressly reserve the right-of-way unto themselves. . . .” Even if Plaintiffs  
 8 are able to obtain expert testimony that provides the proposed legal opinion to the Court, it is  
 9 both untimely and futile.

10           It is untimely because Plaintiffs are well beyond the deadline for filing a motion for  
 11 reconsideration. Under Local Rule 7(h), a motion for reconsideration “shall be filed within  
 12 fourteen days after the order to which it relates is filed.” Plaintiffs’ deadline for reconsideration  
 13 from the June 5, 2015 order expired on June 19, 2015. There is no need to grant a second  
 14 extension in order to facilitate Plaintiff’s submission of expert legal opinion, which is really just  
 15 an untimely request for reconsideration of the June 5, 2015 Order.

16           Plaintiff’s request for an extension in order to present an expert declaration on  
 17 Washington property law is also futile because such a declaration is inadmissible. It is well  
 18 established that “an expert witness cannot give an opinion as to her *legal conclusion*, i.e., an  
 19 opinion on an ultimate issue of law.” *Nationwide Transp. Fin. v. Cass Info. Sys., Inc.*, 523 F.3d  
 20 1051, 1058 (9th Cir. 2008). The determination of applicable law is the sole function of the  
 21 Court. Through its June 5, 2015 order, this Court already determined the application of  
 22 Washington law to Plaintiffs’ centerline allegation. The opinions of an unnamed expert who  
 23

1 apparently disagrees with the Court's holdings are of no moment and cannot justify a second  
2 extension of the amendment deadline.

3 For these reasons, King County respectfully requests that the Court deny Plaintiffs'  
4 motion for a second extension and dismiss this matter with prejudice per the June 5, 2015 Order.

5 DATED this 17th day of July, 2015 at Seattle, Washington.

6  
7 DANIEL T. SATTERBERG  
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**DECLARATION OF FILING AND SERVICE**

I hereby certify that on July 17, 2015, I electronically filed the foregoing document(s) with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 17th day of July, 2015 at Seattle, Washington.

s/ Kris Bridgman  
Kris Bridgman, Legal Secretary  
King County Prosecuting Attorney's Office